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Supreme Court of the United States

October Term, 1998

ELOISE ANDERSON, Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; PETE WILSON, Governor of the State of California; and CRAIG L. BROWN, Director, California Department of Finance,

Petitioners,

v.

BRENDA ROE and ANNA DOE, on behalf of themselves and all others similarly situated,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONERS' BRIEF ON THE MERITS

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QUESTION PRESENTED

Does a trial court err in subjecting to strict scrutiny a federally-authorized statute which does not penalize any fundamental right, and which merely limits for a period of one year a new resident's cash aid welfare benefits to the maximum amount receivable in the state of prior residence?

PARTIES

Petitioners, who were defendants below, are Eloise Anderson, Director of the California Department of Social Services, the California Department of Social Services, the Honorable Pete Wilson, Governor of the State of California, and Craig L. Brown, Director of the California Department of Finance. Petitioners will be referred to herein as "California." Named respondents, plaintiffs below, are Brenda Roe and Anna Doe. On April 23, 1997, on the stipulation of the parties, the trial court permitted this action to be maintained as a class action and certified a class of plaintiffs defined as "all present and future AFDC and TANF applicants and recipients who have applied or will apply for AFDC or TANF on or after April 1, 1997, and who will be denied full California AFDC or TANF benefits because they have not resided in California for twelve consecutive months immediately preceding their application for aid."

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PETITIONERS' BRIEF ON THE MERITS

The petitioners, Eloise Anderson, Director, California Department of Social Services; California Department of Social Services; the Honorable Pete Wilson, Governor of the State of California; and Craig L. Brown, Director, California Department of Finance (hereafter, "California"), respectfully submit their Brief on the Merits.

OPINIONS BELOW

The decision of the Court of Appeals, *Roe v. Anderson*, is reported at 134 F.3d 1400 (9th Cir. 1998) and is reprinted in the Appendix to the Petition for Writ of Certiorari ("Pet.App.") at 1-12. The decision of the Court of Appeals denying the Petition for Rehearing is reprinted in the Appendix to the Petition for Writ of Certiorari at Pet.App. 34. The decision of the trial court is reported at 966 F. Supp. 977 (E.D. Cal. 1997), and is reprinted in the Appendix at Pet.App. 13.

JURISDICTION

On January 28, 1998, the United States Court of Appeals for the Ninth Circuit ("the Ninth Circuit") issued its opinion, affirming the preliminary injunction granted by the United States District Court for the Eastern District of California ("the trial court"). California subsequently filed a petition for rehearing with the Ninth Circuit, which was denied on April 10, 1998. A timely petition for writ of certiorari was filed in this Court on July 9, 1998,

and placed on the docket July 20, 1998. Certiorari was granted on September 29, 1998. This Court has jurisdiction to review, by way of writ of certiorari, the judgment or decree of the Court of Appeals. 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

California Welfare and Institutions Code section 11450.03:

> (a) Notwithstanding the maximum aid payments specified in paragraph (1) of subdivision (a) of Section 11450, families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with paragraph (1) of subdivision (a) of Section 11450, not to exceed the maximum aid payment that would have been received by that family from the state of prior residence.
>
> (b) This section shall not become operative until the date of approval by the United States Secretary of Health and Human Services necessary to implement the provisions of this section so as to ensure the continued compliance of the state plan for the following:
>
> > (1) Title IV of the federal Social Security Act (Subchapter 4 (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code).
> >
> > (2) Title IX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code).

(Added by Stats. 1992, c. 722 (S.B.485), § 37.5, eff. Sept. 15, 1992.)

42 United States Code section 604(c):

> A State operating a program funded under this part may apply to a family the rules (including benefit amounts) of the program funded under this part of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months.

(Aug. 14, 1935, c. 531, Title IV, § 404, as added Aug. 22, 1996, Pub. L. 104-193, Title I § 103(a)(1), 110 Stat. 2124, and amended Aug. 5, 1997, Pub. L. 105-33, Title V, §§ 5002(a), 5503, 5514(c), 111 Stat. 593, 609, 620.)

STATEMENT OF THE CASE

Four years ago, this Court granted certiorari to consider the constitutionality of California Welfare and Institutions Code section 11450.03, the same statute at issue here. *Anderson v. Green*, 513 U.S. 922 (1994). However, the merits of California's argument were not addressed at that time because the matter in its then current posture was not ripe. *Anderson v. Green*, 513 U.S. 557 (1995). Due to changes mandated by federal welfare reform, the issues presented by implementation of California's statute are now ripe for decision. This Court has granted certiorari to consider the appropriate standard of review.

Aid to Families with Dependent Children ("AFDC"), and its replacement, Temporary Assistance to Needy Families ("TANF"), have historically been California's

largest welfare payments programs.[1] In the most recent fiscal year for which actual expenditures were available (fiscal year 1995-1996), California provided AFDC to an average of 2,645,814 persons per month, at an annual cost of $6 billion. Of that total amount, $2.9 billion came from the California state general fund. Declaration of Bruce Wagstaff, "Wagstaff Declaration," Pet.App. 36.

Based on information provided by the United States Department of Health and Human Services for the fiscal year 1996-1997, California had the highest grant level of the 10 most populous states and the sixth highest grant level in the entire United States. Wagstaff Declaration, Pet.App. 36. Although California accounted for 29 percent of all money spent nationwide on the AFDC program, and 10 percent of the national AFDC caseload, it had only 12 percent of the nation's population. Wagstaff Declaration, Pet.App. 36-37.

In 1992, a time of continuing economic and fiscal problems in California, the State initiated a federally-approved, time-limited experimental project to reform its

[1] The federal AFDC program was repealed and replaced with the new TANF program as part of federal welfare reform. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Pub. L. No. 104-193, Title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112. On January 1, 1998, California's welfare program was renamed the California Work Opportunity and Responsibility to Kids program, referred to as CalWORKs. Cal. Welf. & Inst. Code §§ 10063 and 11200. The substitution of TANF for the federal AFDC program, and CalWORKs for the state AFDC program does not affect California's ability to implement the durational residency requirement at issue here.

mammoth AFDC program. Declaration of Dennis Hordyk, attached to Declaration of Theodore Garelis, "Garelis Declaration," and Garelis Declaration, Pet.App. 42 and 44. In conjunction with this experimental project in 1992, the California Legislature enacted, with strong bipartisan support, California Welfare and Institutions Code section 11450.03 ("section 11450.03").[2]

Section 11450.03 provides for a durational residency requirement for the provision of AFDC benefits. Under this statute, new California residents will receive for one year the lower of either the maximum cash aid amount they could have received in their state of prior residence, or the amount of cash aid received by existing California residents.

The experimental project consisted not only of section 11450.03 but work incentive grant reductions, extension of the earnings disregard under which working AFDC recipients can keep more of their earnings without a corresponding reduction in benefits, and elimination of the 100-hour rule under which two-parent AFDC recipient families may remain eligible for benefits despite working more than 100 hours per month. *Beno v. Shalala*, 30 F.3d 1057 (9th Cir. 1994). In 1993, the California Legislature amended the experiment to add new and important elements to the reform effort: (1) an increase from

[2] Senate Bill 485, the precursor to section 11450.03, passed in the California Senate on a vote of 21 to 11. It passed in the California Assembly on a vote of 54 to 25. The Senate concurred in the Assembly amendments on a vote of 29 to 9. California Senate Final History 1991-1992, Regular Session, Volume I, pp. 381-382.

$1,000 to $2,000 in the value of resources an AFDC family can possess and still qualify for benefits, California Welfare and Institutions Code section 11155.1(a); (2) an increase in the allowable value of the recipient family's automobile from $2,000 to $4,500, California Welfare and Institutions Code section 11155.1(a); (3) additional funding for child care to enable more recipients to participate in employment and training activities; and (4) the Cal-Learn Program, which is a $50 million program providing pregnant and parenting teens with cash bonuses for satisfactory school progress, intensive case management services, child care, and other supportive services. California Welfare and Institutions Code section 11331, et seq.

In order to implement the experimental project, including section 11450.03, California obtained waivers of various provisions of federal statutes and regulations, including the Medicaid Maintenance of Effort requirement and various provisions of regulations at 45 Code of Federal Regulations sections 233.20(a)(1) and (2). Garelis Declaration, Pet.App. 42 and Exhibit B thereto, Pet.App. 47.

In response to a challenge on constitutional grounds to California's implementation of section 11450.03, the trial court issued a temporary restraining order on December 22, 1992, enjoining California from implementing the provisions of section 11450.03 pending a hearing on plaintiffs' request for a preliminary injunction. The preliminary injunction was issued by the trial court from the bench on January 28, 1993. *Green v. Anderson*, 811 F. Supp. 516, 523 (E.D. Cal. 1993).

California filed an appeal from the preliminary injunction. On April 29, 1994, the Ninth Circuit summarily affirmed the trial court's order granting the preliminary injunction. *Green v. Anderson*, 26 F.3d 95 (9th Cir. 1994). This Court subsequently granted California's petition for writ of certiorari. *Anderson v. Green*, 513 U.S. 922 (1994). Following briefing and oral argument, this Court held that no justiciable controversy was before it because the action in its then current posture was not ripe. *Anderson v. Green*, 513 U.S. 557 (1995). This was a result of the vacation by the Ninth Circuit of one of the waivers of federal law (the Medicaid Maintenance of Effort requirement) necessary for implementation of section 11450.03. *Beno v. Shalala*, 30 F.3d 1057 (9th Cir. 1994).

Subsequently, California requested a renewed waiver of the Medicaid Maintenance of Effort requirement from the Secretary of the United States Department of Health and Human Services. That renewed waiver was granted, but, at the same time, the Secretary retracted the waiver of federal authority necessary for implementation of section 11450.03. Garelis Declaration, Pet.App. 42 and Exhibit C thereto, Pet.App. 52.

As a result of Congressional efforts to redesign an out-of-date welfare system, on August 22, 1996, President Clinton signed the federal welfare reform bill, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), 42 U.S.C. § 601, et seq. The federal AFDC program was repealed and replaced with a new program, Temporary Assistance to Needy Families ("TANF"). One of the major differences between the new TANF program and the former AFDC program is that

under TANF, welfare benefits are no longer federal entitlements. 42 U.S.C. § 601(b). Additionally, as part of PRWORA, Congress explicitly authorized states to enact durational residency requirements, such as section 11450.03, in their individual TANF plans. 42 U.S.C. § 604(c). The rationale for Congressional authorization of durational residency requirements was to avoid the creation of country-wide welfare magnets in high benefit-level states. H.R. Rep. No. 104-651, at 1337 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, 2396. Congress thus protected states that use their block grants for high benefit levels from becoming "welfare magnets." A third major difference between the TANF and AFDC programs is that under PRWORA, Congress authorized states to limit the receipt of TANF benefits for periods of time up to five years. 42 U.S.C. § 608(a)(7)(A). Pursuant to this authorization, California has chosen to allow its residents benefits for the maximum five-year period. Cal. Welf. & Inst. Code § 11454(b).

Pursuant to the authorization contained in PRWORA, on February 28, 1997, California once again instructed its counties to implement section 11450.03 beginning April 1, 1997. Plaintiffs then moved to block implementation of section 11450.03, by filing the underlying complaint for declaratory and injunctive relief ("the complaint") on April 1, 1997. Plaintiffs contended that section 11450.03 violated various provisions of the United States Constitution and the constitutional right to travel. Pet.App. 7-9.

The complaint named the California Department of Social Services, the directors of the California Departments of Social Services and Finance and the Governor of the State of California as defendants. Plaintiffs are a class

of California residents who have applied or will apply for benefits on or after April 1, 1997, who have not resided in California for twelve consecutive months immediately preceding their application for aid, and whose cash aid will be limited for a period of one year to the maximum amount receivable in their prior state of residence. Jurisdiction was conferred on the District Court by 28 United States Code section 1343(a)(3). The action was brought pursuant to 28 United States Code section 1983.

On April 1, 1997, the District Court granted plaintiffs' application for a temporary restraining order and enjoined implementation of section 11450.03 pending a hearing on plaintiffs' request for a preliminary injunction. Pet.App. 20. Plaintiffs' request for a preliminary injunction was heard on May 16, 1997. Pet.App. 41. The District Court took the matter under submission and issued an order on June 4, 1997, granting the preliminary injunction. The District Court held that, under what it perceived to be governing precedent, it was required to find that section 11450.03 penalizes the right to travel. *Roe v. Anderson*, 966 F. Supp. 977 (E.D. Cal. 1997); Pet.App. 13.

California appealed the order granting the preliminary injunction to the Ninth Circuit. On January 28, 1998, the Ninth Circuit issued an opinion affirming the order of the District Court. *Roe v. Anderson*, 134 F.3d 1400 (9th Cir. 1998); Pet.App. 1. The Ninth Circuit based its erroneous holding on its earlier opinion in *Green* that implementation of section 11450.03 penalizes the right to travel and thus should be subjected to a strict scrutiny standard of review. The Ninth Circuit also based its opinion on an

incorrect statement of the standard of review for preliminary injunctive relief, departing from controlling precedent of this Court. Pet.App. 3, n. 1.[3] California sought rehearing only as to the incorrect standard of review for preliminary injunctive relief, without waiving future review of other issues raised by the Ninth Circuit's opinion. On April 10, 1998, the Ninth Circuit summarily denied California's request for rehearing.

Relying at least in part on the Congressional authorization conferred by PRWORA, other states have enacted similar durational residency requirements. These states include, among others, Rhode Island, *Westenfelder v. Ferguson*, 998 F. Supp 146 (D. R.I. 1998) (order granting preliminary injunction), *appeal docketed*, No. 98-1431 (1st Cir. May 14, 1998); Pennsylvania, *Maldonado v. Houstoun*, No. 97-1893, 1998 WL 569359 (3d Cir. 1998); Minnesota, *Davis et al. v. Doth*, No. 62-C6-97-010231 (Minn. St. Dist. Ct. Dec. 5, 1997) (order granting temporary injunction); Washington, *Ruffin, et al. v. Quasim*, No. C97-5767 FDB (W.D. Wa. Feb. 6, 1998) (order granting preliminary

[3] California's Petition for Writ of Certiorari did not address the incorrect articulation of the standard of review for preliminary injunctive relief by the Ninth Circuit. Despite this incorrect articulation of the preliminary injunctive standard of review, the Ninth Circuit acknowledged that an abuse of discretion will be found where the trial court "base[s] its ruling on an erroneous view of the law." Pet.App. 3, n. 1. As argued below, the trial court did base its ruling on an erroneous view of the law, thus erring in granting the preliminary injunction.

injunction); and New Jersey, *Sanchez v. Department of Human Services*, 314 N.J. Super. 11, 713 A.2d 1056 (1998).

SUMMARY OF THE ARGUMENT

The constitutionality of statutes in the area of economics and social welfare involving the administration of public welfare assistance is reviewed under a rational basis analysis. Strict scrutiny, by contrast, is reserved for statutes adversely impacting either a suspect class, or a fundamental right. Because section 11450.03 temporarily sets levels of cash aid for new California residents at the constitutionally permissible amount of aid receivable in their state of prior residence, new California residents are in no worse position, as a result of the operation of the statute, than if they had not moved to California. Accordingly, California's statute neither impacts nor penalizes the right to travel and the constitutionality of section 11450.03 is to be determined by a rational basis analysis.

Furthermore, section 11450.03 does not permanently classify new state residents as restricted to a lower amount of cash aid. This case thus presents a different situation from previous cases in which this Court struck down state laws that, by withdrawing benefits altogether, penalized the right to travel and triggered strict scrutiny.

Even if section 11450.03 does have some impact on the right to travel, that impact is, at best, remote and incidental. Statutes that do not raise a significant barrier

to interstate migration should be analyzed under the traditional rational basis test.

ARGUMENT

I

BECAUSE CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 11450.03 OPERATES MERELY AS A BENEFIT LEVEL ADJUSTMENT, THE LOWER COURTS ERRED IN SUBJECTING THE STATUTE TO A STRICT SCRUTINY ANALYSIS

In an attempt to reform the welfare system of this country, California and other states have experimented with a variety of responsible, creative solutions to assist their indigent residents in removing themselves from the welfare rolls. Congress joined this effort to reform the welfare system two years ago, passing PRWORA, and therein authorizing states to implement durational residency requirements. See 42 U.S.C. § 604(c).

As of 1992, California had already adopted such a requirement on a bipartisan basis. Cal. Welf. & Inst. Code § 11450.03. Under this statute, new California residents will receive for one year the lower of either the maximum cash aid amount they could have received in their state of prior residence, or the amount of cash aid received by existing California residents. However, California's implementation of section 11450.03 has been hampered by an ongoing constitutional challenge to the statute, and by the application of an incorrect standard of review. Instead of a rational basis review, appropriate for review of a statute setting welfare benefit levels, the lower courts

departed from controlling precedent of this Court and subjected section 11450.03 to a strict scrutiny analysis.

These courts have misunderstood the holding of this Court that:

> [w]hen a state distributes benefits unequally, the distinctions it makes are subject to review under the Equal Protection Clause of the Fourteenth Amendment. Generally, a law will survive that scrutiny if the distinction it makes rationally furthers a legitimate state purpose.

Zobel v. Williams, 457 U.S. 55, 60 (1982).

Controlling precedent from this Court states that a reasonable or rational basis analysis is the appropriate constitutional review for statutes in the area of economics and social welfare involving the administration of public welfare assistance. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). Such is the case here, thereby compelling a rational basis analysis.

Departing from the precedent this Court established in *Dandridge*, the lower courts erred by applying strict scrutiny. In affirming the trial court's order granting a preliminary injunction, the Ninth Circuit reiterated its prior opinion in this ongoing litigation, *Green v. Anderson*, 26 F.3d 95 (9th Cir. 1994), summarily affirming the prior preliminary order enjoining implementation of section 11450.03. *Roe v. Anderson*, 134 F.3d 1400 (9th Cir. 1998). The *Green* trial court had erroneously found that section 11450.03 penalized the right to travel and, therefore, erroneously subjected the statute to a strict scrutiny analysis. *Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993).

However, statutes such as the one at issue here, with a primary focus on setting benefit levels, are to be analyzed under the same rational basis standard to which public welfare assistance statutes are normally subjected. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). In *Dandridge*, this Court held that a statute which disregarded family size and established a benefit level below the cost of living or the standard of need and which encouraged gainful employment, involved the administration of public welfare assistance. Therefore, such a statute was to be reviewed under the rational basis standard. Furthermore, this Court held that such statutes were constitutional. *Id.* at 480, 485. Since section 11450.03 merely adjusts cash aid amounts, it similarly should be reviewed under a rational basis analysis.

In order to subject a statute to strict scrutiny review, it must be shown that the statute either impacts a suspect class, or a fundamental right. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 16 (1973), *rhg. denied*, 411 U.S. 959 (1973). Here, no suspect class has been adversely impacted or even identified. The Ninth Circuit erroneously adopted the legal fiction (indulged in by the trial court), that section 11450.03 adversely impacts the fundamental right of interstate travel. In so holding, the trial court erroneously expanded the reach of *Shapiro v. Thompson*, 394 U.S. 618 (1969), and its progeny to determine the issues in this litigation.

In *Shapiro*, this Court held that legislation which denied *all* welfare assistance to persons who had been state residents for less than a year was constitutionally impermissible because, as such legislation "touches on

the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest." *Shapiro*, 394 U.S. at 638.

To characterize *Shapiro* as barring implementation of section 11450.03 is totally unjustified, as this Court left that very question open:

> We imply no view of the validity of waiting-period *or* residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right to interstate travel.

394 U.S. at 638, n. 21.

Thus, in *Shapiro*, this Court determined only that the complete denial of welfare assistance for a full year implicated the plaintiffs' right of interstate travel. As *Shapiro* addressed only the issue of denial of eligibility for welfare benefits, this Court did not determine whether a more limited statute, such as section 11450.03, which operates only to set levels of cash aid, implicates the right to travel.

This Court refined its analysis of state legislation affecting the right of travel in *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 258-259 (1974). There, this Court stated that *Shapiro* "stand[s] for the proposition that a classification which 'operates to *penalize* those persons . . . who have exercised their constitutional right of interstate migration,' must be justified by a compelling

state interest", 415 U.S. at 258, but repeated its prior statement in *Shapiro*, that "some 'waiting period[s] . . . may not be penalties.' " *Id.* at 258-259.

In both *Shapiro* and *Memorial Hospital* the plaintiffs' right to travel was penalized because they were put in a worse position by application of the statutes at issue after they moved to their new states. In *Shapiro*, the plaintiffs had a right to receive welfare assistance in their state of prior residence. After moving, they were no longer eligible for welfare assistance for a full year. In *Memorial Hospital*, the plaintiffs had a right to state-funded, non-emergency medical care before they moved. After they moved to Arizona, they were not eligible for non-emergency medical care for a period of twelve months. Thus, in both cases, the plaintiffs lost their eligibility for public assistance due solely to their moving to a new state. As a result, this Court determined that plaintiffs' right to travel had been implicated sufficiently to trigger strict scrutiny.

Under *Shapiro* and its progeny, this Court has held that a state statute sufficiently implicates the right to travel and therefore triggers strict scrutiny: (1) "when impeding [interstate] travel is its primary objective"; (2) "when it actually deters such travel" or (3) "when it uses any classification which serves to penalize the right to travel." *State Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 at 903 (1986) (citations and internal quotations omitted).

California's ability to implement section 11450.03 is unaffected by the holdings of *Shapiro* and its progeny. Unlike the plaintiffs in *Shapiro* and *Memorial Hospital*,

plaintiffs here have not lost any *eligibility* for public assistance which they enjoyed in their state of prior residence. California has no waiting period to establish eligibility. Thus, new California residents are immediately eligible for benefits under CalWORKs (the state TANF program) upon establishing residency. The only question in this litigation is the *amount* of cash aid new residents will receive.

Under section 11450.03, plaintiffs receive the same level of cash aid they received, or would have received, in their state of prior residence. Thus, as to the level of cash aid, plaintiffs have no change in their position and will suffer no detriment upon moving to California. In short, plaintiffs would not be any worse off as a result of the operation of section 11450.03 than they would have been had they not exercised their right to travel. They would lose no benefit that would have accrued to them had they not traveled to California. Plaintiffs thus have not been actually deterred from traveling to California and have not been penalized for exercise of that right. It thus cannot be said that the primary objective of section 11450.03 is to impede travel.[4]

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[4] In order to buttress their claim that section 11450.03 is intended to actually prevent indigent people from moving to California (a purpose that does not appear in the wording of section 11450.03, nor in the legislative history of section 11450.03), plaintiffs rely on extraneous materials. Brief in Opposition to Petition for Writ of Certiorari, at 5-8. Those materials deal with California Proposition 165, a voter initiative that did not become law, and California Senate Bill 366, which also was not enacted into law. These materials are irrelevant to this Court's consideration of the statute, as neither Proposition 165 nor Senate Bill 366 is a precursor of section 11450.03. Plaintiffs have thus produced no relevant or credible evidence as to the primary objective of section 11450.03.

Furthermore, benefits under CalWORKs involve more than just cash aid. While only cash aid is addressed by section 11450.03, other CalWORKs benefits are unaffected. For instance, unlike other states, California allows recipients under its state TANF program the full five-year period of eligibility permitted by PRWORA. 42 U.S.C. § 608(a)(7)(A); Cal. Welf. & Inst. Code § 11454(b). Recipients who were subject to a shorter time period in their states of origin and who move to California will receive welfare benefits for the full five-year period. Furthermore, while children may have their aid terminated upon reaching the time limit in their state of prior residence, children residing in California continue to receive aid until they are 18, even if their caretaker relative has reached California's generous five-year limit on aid. Cal. Welf. & Inst. Code § 11454(b). Additionally, all California welfare recipients, including those subject to section 11450.03, are eligible for the full range of employment and training activities and accompanying supportive services (including child care) to enable them to move from welfare to work. Cal. Welf. & Inst. Code §§ 11320.1, 11322.6 and 11323.2. Persons subject to section 11450.03 receive no less than the maximum amount of cash aid which was constitutionally permissible in their state of prior residence, and they are eligible for all other benefits contained in California's welfare package. Since section 11450.03 neither implicates nor penalizes the right to travel, California need only show that section 11450.03 has a rational basis.

Plaintiffs argue that because California's cost of living is generally higher than elsewhere, the level of benefits provided for by section 11450.03 operates as a penalty

on new residents. However, even if it can be shown that the cost of living is uniformly higher in California than elsewhere, this is not sufficient to establish that section 11450.03 operates as a penalty *on the right to travel*. Furthermore, plaintiffs' argument assumes that the amount of cash aid received in the prior state of residence bears some rational relationship to the standard of need or the cost of living in that state. This assumption is wrong as there is no requirement for benefit levels to be related to anything other than budgetary constraints. Under the former AFDC program, many states had constitutionally adequate benefit levels that were much lower than the standard of need. *King v. Smith*, 392 U.S. 309, 334 (1968); *Dandridge v. Williams*, 397 U.S. 471, 480 (1970). The states had "undisputed power" under the Social Security Act "to set [both] the level of benefits and the standard of need" in the AFDC program. *King*, 392 U.S. at 334; *Jefferson v. Hackney*, 406 U.S. 535, 541, 545 (1972). This power of the states to set the amount of cash aid is even less subject to dispute under TANF than under AFDC, as the benefits at issue are no longer deemed to be federal entitlements. 42 U.S.C. § 601(b).

Nor are plaintiffs handicapped by the creation of *permanent* distinctions among residents and newcomers, as were the plaintiffs in *Zobel v. Williams*, 457 U.S. 55 (1982), *State Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986), and *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985). The statute at issue in *State Attorney General of New York v. Soto-Lopez* determined eligibility for veterans' preferences for civil service based upon state residency at the time of induction into the armed forces. Similarly, the statute at issue in *Hooper v. Bernalillo County*

Assessor determined eligibility for a property tax exemption based upon residency before a specific date.

Section 11450.03 does not determine or affect *eligibility* for welfare benefits. All persons subject to the provisions of section 11450.03 have been determined to be eligible for benefits in California. Section 11450.03 merely sets the amount of cash aid for those eligible recipients. Unlike plaintiffs in *Shapiro, Memorial Hospital, Hooper,* and *Soto-Lopez,* plaintiffs here are not foreclosed from welfare benefits under section 11450.03.

Under plaintiffs' theory, any difference in the level of any government service or benefit between states (or even a difference in laws pertaining to social, economic or domestic spheres) impacts the decision to travel to another state, and could therefore penalize the right to travel. This argument, of course, leads to absurd results.[5] States do not, and do not have to, maintain either similar welfare benefit levels, *Dandridge*, 397 U.S. at 480, or, for that matter, similar requirements relating to domestic relations, *Sosna v. Iowa*, 419 U.S. 393 (1975). Simply put, each state has its own distinct laws impacting the life of its residents, both old and new. Differences between states, even though at times major, do not penalize the

[5] If plaintiffs' argument were valid, it would then be unconstitutional for each state to maintain its own unique benefit level. Any state with a lower amount of cash aid than another state would be constitutionally required to raise its grant level, so as not to impact the right to travel.

right to travel. There is no constitutional guarantee that a move to a new state will come without differences.[6]

Thus, because new California residents will continue to be *eligible* for TANF benefits, restricted for a limited time only to the maximum *amount* receivable in their state of prior residence, section 11450.03 does not operate to implicate or penalize the right to travel to California. The lower courts erred in extending the principles in *Shapiro* by subjecting section 11450.03 to strict scrutiny. Instead, the lower courts should have applied the controlling precedent of *Dandridge* and analyzed section 11450.03 under a rational basis analysis.[7]

[6] Plaintiffs essentially argue that without the guarantee of a certain amount of cash aid, they cannot move to California. They are therefore arguing that California is constitutionally obligated to fund their move. No other newcomers to California have the ability to demand a certain payment level upon their decision to move to a new home – nor should they. As a general matter, a state is under no duty to subsidize the costs of the exercise of constitutional rights. In *Harris v. McRae,* 448 U.S. 297, 317-318 (1980), this Court held that a woman's freedom of choice does not carry with it a constitutional entitlement to the financial resources necessary to exercise that freedom. Here, California has not prohibited travel or placed an obstacle in the way of a newcomer's move to California; it has simply limited amounts of cash aid for recent California residents to no more than they received or would have received in their state of prior residence. This benefit level adjustment is no more an obstacle to travel than is the fact that California offers its existing residents a different package of welfare benefits – including grant levels and time limits – than the other states. New residents are free to travel to California, and TANF benefits remain available for recent California residents.

[7] To the extent that *Shapiro* and its progeny appear to hold that the constitutionality of a statute relating to the

II

A COMPARISON OF THE POSITION OF NEWCOMERS BEFORE AND AFTER TRAVEL TO CALIFORNIA DEMONSTRATES THAT SECTION 11450.03 DOES NOT PENALIZE NEW CALIFORNIA RESIDENTS

The determination as to whether section 11450.03 operates as a penalty on the decision to travel should be analyzed by ascertaining the effect of the statute on persons who have traveled, or who may travel, to California. Because only residents who have recently traveled to California are subject to the provisions of section 11450.03, the relevant constitutional inquiry is whether those recently arrived residents suffer a detriment due to a decision to travel to California. To determine whether such a detriment exists, one must compare the position of newcomers before and after travel to California. Here, as noted above, plaintiffs continue to receive, on a temporary basis, the maximum amount of cash aid receivable in their state of prior residence. Therefore, these newcomers have no change in position due to their move to California and their right to travel is not penalized by operation of section 11450.03.

However, citing *Zobel v. Williams*, 457 U.S. 55 (1982), *State Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 904 (1986) and *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 623 (1985), the lower courts determined that

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administration of public welfare assistance which does not penalize the right to travel, or any other fundamental right, should be subjected to a strict scrutiny analysis, those holdings should be re-examined.

the relevant penalty comparison is not between newcomers to California and residents of other states, but between newcomers and existing California residents. The lower courts have misapplied the previous statements of this Court.

This Court did not determine in those cases that the existence of a penalty is to be based on a comparison between newcomers and existing residents. Instead, that comparison was invoked in order to determine whether the state was distributing benefits unequally between newcomers and existing residents; i.e., whether the statute at issue could be challenged on equal protection grounds. When, as here, an unequal distribution of benefits is challenged on equal protection grounds, the analysis then shifts to the determination of the proper standard of review. If the statute impacts on a suspect class or penalizes a fundamental right, the statute must undergo a strict scrutiny analysis. Otherwise, as here, the statute must merely pass a rational basis test.

The lower courts, however, erred by analyzing the unequal distribution of benefits between newcomers and existing California residents as sufficient evidence of a penalty. To the contrary, the correct analysis is to determine whether or not a *newcomer* has suffered a detriment solely due to the exercise of the right to travel. This analysis can only be performed by comparing the positions of newcomers before and after travel.

When examining the question whether a penalty exists upon operation of a public assistance statute, this Court has compared the position of newcomers before and after travel to the state. In *Memorial Hospital*, to

ascertain the existence of a penalty, this Court analyzed whether a person afflicted with a certain ailment might consider a move to a state with no eligibility for non-emergency medical care for a certain period. *Memorial Hospital*, 415 U.S. at 257. Thus, in order to examine whether a penalty on travel existed, this Court examined the position of a person contemplating travel before and after that travel.

To compare (as did the lower courts) recent arrivals with existing California residents for the purpose of analyzing the existence of a penalty is to compare apples to oranges. As noted above, existing California residents are, by definition, not impacted by section 11450.03 since any decision to travel to California has already been made. Therefore, such a comparison does not involve questions of travel. Any comparison between newcomers and existing residents as to the effect of the statute relates solely to the difference in benefit levels. Controlling precedent of this Court demonstrates that questions as to benefit levels are determined by a rational basis analysis. *Dandridge*, 397 U.S. at 485.

Therefore, the proper comparison for an analysis of the existence of a penalty is between the positions of newcomers before and after travel to California. Because these newcomers are no worse off after travel to California as to the amount of cash aid receivable, there is no penalty on the right to travel and strict scrutiny is not triggered. Therefore, this Court should hold that the appropriate standard of review for section 11450.03 is the rational basis standard.

III

EVEN IF SECTION 11450.03 HAS AN IMPACT ON TRAVEL, THAT IMPACT IS REMOTE AND INCIDENTAL. THEREFORE, SECTION 11450.03 IS NOT SUBJECT TO STRICT SCRUTINY

The dissent by Chief Justice Rehnquist in *Memorial Hospital*, 415 U.S. at 281-283, notes that in *Williams v. Fears*, 179 U.S. 270 (1900), the Court upheld a Georgia statute taxing persons hiring labor for work outside the State of Georgia because it affected freedom of egress "only incidentally and remotely." Because there was a reasonable basis for the Georgia tax statute, it did not violate the Fourteenth Amendment to the United States Constitution. *Williams*, 179 U.S. at 275.

Chief Justice Rehnquist's dissent in *Memorial Hospital* also notes that until this Court's decision in *Shapiro*, the leading case involving the right to travel, *Edwards v. California*, 314 U.S. 160 (1941), invalidated a statute that clearly was specifically designed to deter indigent persons from entering California by subjecting to criminal penalties "any person 'that brings or assists in bringing into the State any indigent person.' " *Memorial Hospital*, 415 U.S. at 282. The statute at issue in *Edwards* was not an incidental or remote barrier to migration. To the contrary, it was a purposeful attempt to insulate the state from indigents and served as a significant barrier to interstate travel. Thus, cases prior to *Shapiro* demonstrate that statutes whose impact on travel is incidental and remote should be judged by traditional, rational basis, equal protection tests. To be judged by stricter, heightened scrutiny, statutes should do more than just "touch on" the right to travel. Strict scrutiny should be reserved for

statutes which impose a significant and severe penalty on travel. Were this not the case, the result in *Sosna v. Iowa*, 419 U.S. 393 (1975), would be inexplicable since this Court in *Sosna* permitted the State of Iowa to temporarily deprive newcomers of the right to file for divorce, notwithstanding the "touch" that state law had on interstate migration. This Court in *Sosna* made clear that merely touching on the right to travel is insufficient to trigger strict scrutiny. *Id.* at 406.

Therefore, the constitutionality of section 11450.03 should be judged by traditional, rational basis equal protection tests. Indeed, a rational basis analysis is the appropriate constitutional review for statutes involving the administration of public welfare assistance. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

In this case, the impact on travel of section 11450.03 is, at most, incidental and remote to the purpose of reducing state expenditures and aiding in welfare reform. As to their amount of cash aid, plaintiffs remain in a position no worse than that which they occupied before departing their state of former residence.[8] Section 11450.03 does not provide a penalty on the basic necessities of life, it does

[8] "In both 1980 and 1985 all but five of the states had a cost of living within ten percent of the national average . . . when all states are considered together, the variation in AFDC benefits is four times larger than the variation in the cost of living." Peterson, et al., *Welfare Magnets* (The Brookings Institute, 1990) p. 11. Thus, there is not a significant relationship between a state's cost of living and its welfare payments.

not render new residents of California ineligible for public assistance, and it does not prevent anyone from traveling to California. Plaintiffs receive no less than an amount of cash aid which was constitutionally permissible in their state of prior residence.[9]

To examine section 11450.03 in isolation is to ignore the full extent of California's welfare reform program. This program is more than just section 11450.03. It includes work incentives, increases in resource limits and other forms of cash and non-cash assistance. Moreover, for every three dollars a TANF cash aid grant is reduced by operation of the statute, Food Stamps are increased by approximately one dollar. See Declaration of Bruce Wagstaff. Pet.App. 38. In addition, all California TANF recipients (including new residents) may be entitled to a Special Needs Allowance, including an allowance for homeless assistance, *id.*, and persons subject to section 11450.03 remain eligible for full Medicaid benefits. *Id.* Therefore, the impact of section 11450.03 on a person's decision to travel to California must be examined in conjunction with all the other elements of California's public assistance program. Thus, if section 11450.03 is viewed as a penalty on travel, that penalty has only an

[9] It is constitutionally permissible both to establish a benefit level below the cost of living or the standard of need and to set benefits which will encourage gainful employment. It is also constitutionally permissible to disregard family size in setting benefit levels. *Dandridge v. Williams*, 397 U.S. 471, 480 (1970). Thus, to the extent that section 11450.03 operates as a reduction of benefits, section 11450.03 is constitutionally permissible.

incidental impact on the total package of benefits California offers.

Although plaintiffs have focused on the high cost of living in California, such considerations are irrelevant as there is no constitutionally required relationship between the cost of living or standard of need and the level of AFDC payments. Thus, the impact of section 11450.03 on the right to travel is significantly less than the impact of the statute at issue in *Shapiro*, which operated as a total denial of welfare assistance for a year. The impact of section 11450.03 is also much less than the impact on the right to travel of the statutes at issue in *Zobel v. Williams*, *State Attorney General of New York v. Soto-Lopez*, and *Hooper v. Bernalillo County Assessor*. In all of those cases, the statutes at issue created permanent classifications between existing residents and newcomers, which is not the case under section 11450.03. Because these cases are factually distinguishable from this case, this Court must hold that the lower courts apply a rational basis analysis to statutes such as section 11450.03, which have, at most, only a temporary and incidental effect on the right to travel.

CONCLUSION

This Court has the opportunity to allow the democratic processes of the California Legislature and the United States Congress to stand. The constitutionality of section 11450.03 may be upheld without overruling *Shapiro* and its progeny because plaintiffs' right to travel to California is not penalized by operation of the statute.

Instead, the statute merely sets the amount of cash aid which may be received by new California residents. This statute is clearly within the parameters of economic and social welfare legislation involving the administration of public welfare assistance. Clear precedent of this Court demonstrates that the constitutionality of such statutes should be examined under a rational basis analysis.

California is not asking this Court to decide whether the statute is the best way to allocate public resources. That decision has already been made by the Legislature and by Congress. As noted by this Court,

> . . . the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.

Dandridge at 487. Additionally, state measures such as section 11450.03 are the *precise* result Congress contemplated and approved when authorizing states to adopt durational residency requirements[10] which are among those federal welfare reform measures which

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[10] The legislative history of PRWORA demonstrates that Congress was aware of the issues involved in the ongoing challenges to the implementation of durational residency requirements by the states. "The U.S. Supreme Court has invalidated some State laws that withheld aid from persons who had not resided there for at least 1 year. It has not ruled on the question of paying lower amounts of aid for incoming residents." H.R. Rep. No. 104-651, at 1337 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, 2396.

> grant[] maximum State flexibility to show true compassion by helping those in need achieve the freedom of self-reliance.

H.R. Rep. No. 104-651, at 1 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, 2184.

Instead, the question here is the appropriate standard of review for a statute involving the administration of public welfare assistance. Because the impact of section 11450.03 is limited to a temporary setting of cash aid amounts, it does not implicate or penalize the right to travel sufficiently to trigger strict scrutiny. Therefore, rational basis review is the appropriate standard. Accordingly, this Court should reverse the judgment of the Ninth Circuit and remand this action with instructions to dissolve the preliminary injunction.

Respectfully submitted,

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